

TESTIMONY ON SB 150 IN SENATE LOCAL GOVERNMENT COMMITTEE

JANUARY 21, 2011

SB 150 "MONTANA CONSTITUTIONAL RIGHTS PROTECTION ACT"

Chairman, Senators Spell

My name is Jan Anderson. I am the editor and publisher of two small weekly newspapers, the Boulder Monitor and the Jefferson County Courier. We are proud of our reputation for standing up for the rights of citizens in our area and have been recognized repeatedly for our efforts, including with the 2004 Freedom of Information first place award for newspapers of any size in the nation from the National Newspaper Association.

To stand up for the rights of our citizens, we have sued local government agencies multiple times and never lost a suit. We take pride in the benefits that has garnered for the public. At the same time we have a good relationship with our public officials who have said they respect what we have done and have learned from our positions.

So when I came across a bill with the short title "Provide protection of rights through actions against public officials," it captured my interest.

While I support keeping public officials accountable, I do not support this bill for several reasons.

I must admit that I find the bill rather confusing and at times contradictory. For instance, Section 3, which purports to protect public employees, says it does not apply to a violation of a constitutional right. But I suspect that most folks unhappy with an action by a public employee would point to some constitutional basis for their position, whatever it might be.

Despite my history of being a thorn in the side of local government officials, I believe most everyone who goes into public service does so out of good intentions of serving the public. I am concerned about the quality of public employees we would get if they know every action they take could subject them to charges of "official oppression" as an individual without the defensive support of their agency. Who would want to work on our behalf in government under that situation?

On page 2, line 23 makes it clear the law would apply to every single government employee at any level. I would hate to think that when I go into a public office and request a document I believe the public has a constitutional right to see that a clerk could be seriously punished in court for hesitating or acting on a sincere belief that the document is not public.

At the same time, this bill appears to subject citizens who ask for a public document to jeopardy. If the citizen fails to gain the document, he could wind up paying court costs and attorney fees for the public employee's defense. That is likely to have a chilling effect on citizens seeking to enforce their rights.

I am extremely bothered by the provision contained on page 1, lines 18-20. "A public official who denies, restricts, or infringes upon the exercise of a constitutional right of another person without due process of law does so as a private person and not as a public official, and the act is not an official act." So, let's take for instance an example from my hometown of Boulder, home to the state's Montana Developmental Center. Clients there have a constitutional right to a safe environment. If an employee were to hit a client, would the client have no recourse against the state for failing to adequately train or supervise that employee? Could there be no consequences from the institution against the employee because the employee was acting as a private person, not a representative of the facility?

I am concerned this bill would take government off the hook for many situations and would do a disservice to the public.

I believe this bill conflicts with MCA 2-3-221 (Cost to plaintiff in certain actions to enforce constitutional right to know) and probably many other laws.

I have many other concerns about this bill, but I will rest with those I have mentioned and urge a DO NOT PASS on SB 150.